THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.18263 of 2006
And
WRIT PETITION No.20809 of 2006

DATED: 27TH OCTOBER, 2006.

In W.P.No.18263 of 2006 :

Between :

M/s. Sri Mahaveer Stone Crushers, A partnership firm,
5-5-669, Malakunta Road, Hyderabad, rep. by
its Managing Partner Sri Manak Chand Jain. … Petitioner

And

1. The Divisional Forest Officer, Mahaboobnagar
   At Mahaboobnagar.
2. The Forest Range Officer, Amangal,
   Amangal Mandal, Mahaboobnagar District.
3. The Assistant Director of Mines & Geology,
   Mahaboobnagar. … Respondents

In W.P.No.20809 of 2006 :

Between :

M/s. Shree Mahaveer Stone Crushers, A partnership firm,
5-5-669, Malakunta Road, Hyderabad, rep. by
its Managing Partner Sri Manak Chand Jain. … Petitioner

And

1. The Divisional Forest Officer, Mahaboobnagar
   At Mahaboobnagar.
2. The Forest Range Officer, Amangal,
   Amangal Mandal, Mahaboobnagar District.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.18263 of 2006
And
WRIT PETITION No.20809 of 2006

COMMON ORDER :

These two writ petitions are filed by one M/s. Sri Mahaveer Stone Crushers aggrieved by the alleged interference by the respondents with its mining operations and seizing its machinery i.e., stone crushers and allied items.

It is not in dispute that the petitioner is granted quarry lease in respect of 4 hectares of land situated in Sy.Nos.260/86 and 260/87 of Kadthal Village, Amangal Mandal, Mahaboobnagar District. The said lease was granted by the Assistant Director of Mines & Geology, Mahaboobnagar Distrit vide proceedings dated 6-4-2002 for a period of 10 years. Pursuant thereto, the petitioner firm has been carrying on the crushing and mining operations within the lease area. While so, the 2nd respondent – Forest Range Officer, Amangal along with his subordinates started interfering with the crushing operations alleging that the land in question forms part of the Reserved Forest.

According to the petitioner, the land in respect of which the lease was granted in its favour was surveyed and demarcated in a joint survey between the pattadars, Revenue and Forest Officials in the year 1997 and it was found that the Sy.Nos.260/15 and 260/16 (old) corresponding to new Sy.No.260/86 and 260/87 were not included in the Reserved Forest Block, Kadthal. It is stated that to the said effect, the 1st respondent issued a letter dated 16-4-1999. Though the said

fact was brought to the notice of the Forest Range Officer, they refused to take the said survey report into consideration. In the circumstances, the petitioner filed W.P.No.18263 of 2006 seeking a declaration that the action of the respondents in interfering with the quarrying and crushing operations of the petitioner firm in Sy.No.260/16 (old) corresponding to new Sy.No.260/87 as arbitrary and illegal.

This Court while directing notice to the respondents in W.P.No.18263 of 2006, by order dated 31-8-2006 in W.P.M.P.No.22941 of 2006 directed the respondents not to interfere with the functioning of the petitioner quarry and crushing operations to the extent of land covered by proceedings dated 6-4-2002 issued by the Assistant Director of Mines & Geology, Mahaboobnagar.

The petitioner alleged that in spite of the said order, the officials of the Forest Department came to the mining area on 26-9-2006 and, without issuing notice and without conducting any panchanama, highhandedly seized the machinery including the stone crushers of the petitioner. Aggrieved by the said action, the petitioner filed W.P.No.20809 of 2006 contending inter alia that the respondents do not have any jurisdiction to exercise the power of seizure under Section 44 of the A.P. Forest Act, 1967 and consequently to direct the respondents to forthwith release the seized machinery.

In W.P.No.18263 of 2006 a counter-affidavit has been filed by the Divisional Forest Officer, Mahaboobnagar alleging that taking advantage of the proceedings of the Assistant Director of Mines & Geology, dated 6-4-2002 the petitioner had established the stone crusher in the Reserved Forest Block, Kadthal situated in Sy.No.260/18. It is alleged that before granting the said quarry lease in favour of the petitioner, the Assistant Director of Mines & Geology, Mahaboobnagar did not obtain No Objection Certificate (NOC) from the Forest Department as required as per the Government Memo dated 20-4-2001. It is further stated that common area of 1816 acres situated in Sy.No.260/18 of Kadthal village was included in the Reserved

Forest Block of Kadthal by notification under Section 15 of the A.P. Forest Act, 1967 vide G.O.No.1464, Food & Agriculture (For-III) Department, dated 18-7-1970. No patta lands were included in the said Reserved Forest Block. However, the petitioner had encroached into the Reserved Forest Block illegally and established stone crusher and has been carrying on quarrying operations in the forest area. In the circumstances, the Divisional Forest Officer, Mahaboobnagar addressed a letter dated 31-3-2005 to the Assistant Director of Mines & Geology for cancellation of the quarry lease granted in favour of the petitioner. Pursuant thereto, in the meeting of the District Level Task Force for prevention of illegal Mining and Transport held on 17-7-2006 under the Chairpersonship of District Collector, Mahaboobnagar it was decided to conduct joint inspection by the Mines & Geology, the Forest and Revenue Departments. Accordingly, joint inspection was held on 24-8-2006 in the Forest Block, Kadthal and it was found that the crushing area and quarrying area are located in the Reserved Forest Block, Kadthal and that the petitioner has taken up quarrying in 9 spots over an area of 4 hectares in Reserved Forest Block. It is also stated that the Assistant Director of Mines & Geology, Mahaboobnagar had agreed that the area in which the petitioner's crushers were established falls within the Reserved Forest Area. Since the petitioner was illegally carrying on quarrying operations, an offence was booked against the petitioner on 30-8-2006 by the Deputy Range Officer, Kadthal after conducting panchanama. On 31-8-2006 the District Collector, Mahaboobnagar addressed a letter to the Deputy Director of Mines & Geology, Hyderabad requesting to cancel the lease of stone and metal quarrying granted in favour of the petitioner.

An additional affidavit has also been filed by the Divisional Forest Officer, Mahaboobnagar on behalf of the respondents 1 and 2 stating that due to establishment of stone crusher as well as blasting activities and quarrying operation, there is heavy damage to the forest wealth and the estimated value of destruction of loss is coming to

Rs.185.774 lakhs.

In view of the illegal activities being carried on by the petitioner, cases were booked under Section 20 (1) (c) (ii), (v), Section 52 (d) of the A.P. Forest Act, 1967 and a notice was issued to the Divisional Engineer (Electrical), Jadcherla by the Forest Range Officer, Amangal to show-cause as to why action should not be taken against him for violation of the provisions of the Forest Conservation Act, 1980 by laying of electric transmission lines in Reserved Forest Block, Kadthal for supplying power to the petitioner. The Superintending Engineer was also addressed a letter by the District Collector, Mahaboobnagar on 28-9-2006 to disconnect the power supply to the petitioner's crushers. Accordingly, the power supply was disconnected on 5-10-2006. That apart, the Mandal Revenue Officer, Amangal and Forest Range Officer, Amangal have inspected the stone crusher on 12-10-2006 and also confirmed that the location of stone crusher established by the petitioner was within the boundary limits of Reserved Forest Block of Kadthal.

In the counter-affidavit filed in W.P.No.20809 of 2006 while reiterating the same stand, it is further stated that in the guise of the interim order granted by this Court in W.P.No.18263 of 2006 the petitioner had further extended quarrying operations in the Reserved Forest Area and during the raids conducted on 27-9-2006 in the Reserved Forest Block, Kadthal it was noticed that about 200 labour were camping in the Reserved Forest Area illegally. In the circumstances, the vehicles and machinery found in the Reserved Forest Area were seized and cases were registered for violation of the provisions of the A.P. Forest Act, 1967 and in pursuance thereof action is being taken as per the provisions of Section 44 of the A.P. Forest Act, 1967 for confiscation of the seized property. It is further stated that some of the persons who were present on the land in question claimed that they are the owners of stone crusher and quarries and used harsh language against the officials leading to

registration of Crime No.77 of 2006 against them. The said persons were also arrested by the police.

An affidavit-in-reply has been filed by the petitioner disputing the version of the respondents that the material was seized under panchanama following due process of law. The allegation that the petitioner has encroached into the Reserved Forest Block has also been categorically denied and it is stated that the mining lease area is situated in patta land and crushing operations being carried on only in the leased land.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader for Forests appearing for the respondents.

From the material on record, it is clear that the petitioner was granted quarry lease in Sy.No.260/15 and 260/16 which co-relates to new Sy.Nos.260/86 and 87. Whereas the petitioner claims that the said land forms patta land as shown in the map which was also confirmed in the joint survey conducted on 27-2-1997, the respondents disputed the same and contended that the land whereupon quarry lease was granted forms part of Reserved Forest Block of Kadthal. It is also alleged that the lease was granted in favour of the petitioner without obtaining NOC from the Forest Department.
The material on record further shows that the fresh joint inspection was conducted on 24-8-2006 by the officials of the Mines Department, Forest and Revenue Departments. Though the respondents contended that in the said joint inspection the boundary of the Reserved Forest Block with reference to the Notifications, Maps, Map of Survey of India was verified and it was agreed that the crusher area is located within the Reserved Forest Block, Kadthal, the said version has been seriously disputed by the petitioner and it was pleaded that the said survey was not confirmed by the officials of the Mining Department. Obviously, there is a dispute with regard to the identify of the land in question and there is no consensus between the

Departments of Mines and Geology and the Department of Forest. Such a disputed question of fact cannot be enquired into and decided by this Court in writ proceedings.

At any rate, the counter-affidavits filed by the respondents revealed that the District Collector, Mahaboobnagar had already addressed a letter to Deputy Director of Mines & Geology, Hyderabad to cancel the quarry lease granted in favour of the petitioner. Though nothing has been placed before this Court to show any such proceedings have been initiated, it is not disputed by the respondents that as on today the lease in favour of the petitioner is subsisting.

In the circumstances and particularly in view of the fact that the dispute is with regard to the location/identity of the land, leased out to the petitioner, I am of the opinion that the matter requires a detailed enquiry after hearing all the concerned authorities, and if necessary after spot inspection and after affording an opportunity to the petitioner to putforth his version. It is made clear that the lease in favour of the petitioner shall not be varied without conducting the enquiry as indicated above. In the meanwhile, since admittedly there is no dispute with regard to the identity of Sy.No.260/87, the respondents are directed not to interfere with the quarrying operations in the said land in any manner whatsoever.

So far as Sy.No.260/86 is concerned, it is left open to the Assistant Director of Mines & Geology, Mahaboobnagar to pass appropriate orders forthwith regulating/restricting the mining operations by the petitioner keeping in view the assertion by the Forest Department that it forms part of the Reserved Forest and it is causing damage to the forest wealth.

With regard to the machinery seized on 27-9-2006, it is to be noted that whereas the petitioner alleged that the seizure was affected without following due process of law and without even drafting a panchanama, the respondents in their counter-affidavit denied the said allegation.

Be that as it may, Section 44 of the A.P. Forest Act, 1967 makes it clear that any forest produce or tools or vehicles used in committing a forest offence are seized the same shall be produced before the Authorised Officer under the Act. Such officer if satisfied that the forest offence has been committed may order confiscation of the same after conducting an enquiry as provided under sub-section (2-B) of Section 44 of the Act. Accordingly, while leaving it open to the Authorised Officer to proceed with such enquiry and pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order, having regard to the fact that the machinery seized is essential for carrying on mining operations by the petitioner, the respondents are directed to release the seized stock pending enquiry subject to the condition that the petitioner furnishes Bank Guarantee to 50% of the value of the seized stock. For the balance, the petitioner shall furnish immovable property security to the satisfaction of the Divisional Forest Officer, Mahaboobnagar.

With the above directions, both the Writ Petitions are disposed of. No costs.

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G. ROHINI, J.

Dt. 27-10-2006

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